

NINETEENTH REPORT
STANDING COMMITTEE ON FINANCE
(2001)

(THIRTEENTH LOK SABHA)

MINISTRY OF FINANCE
[DEPARTMENT OF ECONOMIC AFFAIRS—
(BANKING DIVISION)]

THE NEGOTIABLE INSTRUMENTS
(AMENDMENT) BILL, 2001

Presented to Lok Sabha on 23.11.2001

Laid in Rajya Sabha on 26.11.2001



LOK SABHA SECRETARIAT
NEW DELHI

November, 2001/Agrahayana, 1923 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE
ON FINANCE (2001)

Shri Shivraj V. Patil — *Chairman*

MEMBERS

Lok Sabha

2. Shri Raashid Alvi
3. Shri Sudip Bandyopadhyay
- *4. Shri Prabodh Panda
5. Smt. Renuka Chowdhury
6. Shri G. Putta Swamy Gowda
7. Shri Rattan Lal Kataria
8. Shri Brahmanand Mandal
9. Shri M.V. Chandrashekhara Murthy
10. Shri M.V.V.S. Murthy
11. Shri Kamal Nath
12. Shri Rupchand Pal
13. Shri M. Padmanabham
14. Shri Prakash Paranjpe
15. Shri Raj Narain Passi
16. Dr. Sanjay Paswan
17. Shri Varkala Radhakrishnan
18. Shri Pravin Rashtrapal
19. Shri Ram Singh Rathwa
20. Shri S. Jaipal Reddy
21. Shri T.M. Selvaganpathi
22. Mohammad Shahabuddin
23. Shri C.N. Singh
24. Shri Kirit Somaiya
25. Shri Kodikunnil Suresh
26. Shri Kharabela Swain
27. Shri Narayan Dutt Tiwari
28. Vacant
29. Vacant
30. Vacant

*Nominated *vice* Shri Ajoy Chakraborty to the Committee *w.e.f.* 23 July, 2001

Rajya Sabha

31. Shri S.S. Ahluwalia
32. Shri Krishna Kumar Birla
33. Shri Vijay Darda
34. Dr. Biplab Dasgupta
35. Shri K. Rahman Khan
36. Shri Suresh A. Keshwari
37. Shri Narendra Mohan
38. Shri Praful Patel
39. Shri P. Prabhakar Reddy
40. Shri N.K.P. Salve
41. Prof. M. Sankaralingam
42. Shri Amar Singh
43. Shri Ranjan Prasad Yadav
- *44. Shri Solipeta Ramachandra Reddy
- **45. Vacant

SECRETARIAT

- | | | |
|---------------------------|---|-----------------------------|
| 1. Shri P.D.T. Achary | — | <i>Additional Secretary</i> |
| 2. Dr. (Smt.) P.K. Sandhu | — | <i>Joint Secretary</i> |
| 3. Shri R.K. Jain | — | <i>Deputy Secretary</i> |
| 4. Shri S.B. Arora | — | <i>Under Secretary</i> |
| 5. Shri D.R. Shekhar | — | <i>Committee Officer</i> |

*Nominated to the Committee w.e.f. 9 April, 2001.

**Vacant.

INTRODUCTION

I, the Chairman, Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf present this Nineteenth Report on the Negotiable Instruments (Amendment) Bill, 2001.

2. The Negotiable Instruments (Amendment) Bill, 2001 was introduced in the Lok Sabha on 24th July, 2001. The Bill was referred to the Committee on 26 July, 2001 under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee after going through the memoranda received from the Bounced Cheque Victims Forum, Mumbai and Investors' Grievance Forum, Mumbai invited them to depose and place their viewpoint before the Committee. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Economic Affairs—Banking Division), the Ministry of Law, Justice and Company Affairs and the Reserve Bank of India on 9th October, 2001. The Committee considered and adopted the draft Report at their sitting held on 2 November, 2001.

4. The Committee wish to express their thanks to the representatives of the Ministries of Finance, Law, Justice and Company Affairs, Reserve Bank of India for placing before the Committee the information in connection with the examination of the Bill.

5. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
13 November, 2001
22 Kartika, 1923 (Saka)

SHIVRAJ V. PATIL,
Chairman,
Standing Committee on Finance.

REPORT

Background

1. The Negotiable Instruments Act, 1881 was enacted with a view to define the law relating to Promissory Notes, Bills of Exchange and Cheques. In the past it has undergone several amendments to meet the changing requirements of the financial sector from time to time. During the last decade the public perception in respect of use of cheques underwent a sea change and there has been a tremendous spurt in usage of cheques in public dealings.

2. The Negotiable Instruments Act, 1881 was last amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in the event of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encouraging the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions namely sections 138 to 142 in Chapter XVII have, however, been found to be deficient in dealing with the dishonour of the cheques. Not only the punishment provided in the Act has proved to be inadequate but the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

3. A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act, 1881 in various Courts in the country. Keeping in view the large number of complaints pending under this Act in various Courts, a Working Group was constituted under the chairmanship of Shri S.B. Jai Singhani, Additional Solicitor General of India, to review section 138 of the Negotiable Instruments Act, 1881 and make recommendations with regard to the changes needed to effectively achieve the purpose of that section.

4. The recommendations of the Working Group along with other representations of various institutions and organisations were examined by the Government in consultation with the Reserve Bank of India and other legal experts and thereafter the Government decided to bring the following amendments in the Negotiable Instruments Act, 1881:—

- (i) increasing the punishment as prescribed under the Act from one year to two years;
- (ii) increasing the period for issue of notice by the payee to the drawer from 15 days to 30 days;
- (iii) to provide discretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;
- (iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;
- (v) to prescribe procedure for servicing of summons by the Court through speed post or empanelled private couriers;
- (vi) to provide for summary trial of the cases under the Act with a view to speeding up disposal of cases; and
- (vii) make the offences under the Act compoundable.

5. The proposed Amendment Bill was introduced in the Lok Sabha on 24th July, 2001. The Bill was referred to the Standing Committee on Finance by the Hon'ble Speaker on 26th July, 2001 under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report thereon.

6. The Committee, after going through the memoranda received from the Bounced Cheque Victims Forum, Mumbai and the Investors' Grievances Forum, Mumbai invited them to depose and place their viewpoint before the Committee. The Committee also took oral evidence of the representatives of the Ministry of Finance (Department of Economic Affairs-Banking Division), the Ministry of Law, Justice and Company Affairs and the Reserve Bank of India on 9th October, 2001.

7. After having considered the Negotiable Instruments (Amendment) Bill, 2001, clause-wise, the Committee are generally in agreement with the broad objectives of the Bill. They, however, find that there are certain areas which need further attention in view of the hardships of the victims of the bounced cheques. They therefore approve the Bill for enactment by Parliament subject to the modifications/recommendations as detailed in the succeeding paragraphs.

Section 138—Dishonour of Cheque for insufficiency, etc. of funds in the account reads as under:—

8. "Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both."

It has been proposed to enhance the term of imprisonment from one year to two years in the present amendment Bill.

9. The Committee note that the above provision stipulates that the Bank stands discharged from its liability only when it makes payment according to the amount due upon the instrument and in case if the amount in the account of the drawer is less even by a small amount, the cheque is treated as dishonoured. The obvious consequence of this is that the payee remains deprived of even the amount which is otherwise available in the account of the drawer, which in turn results in causing him undue hardship.

10. The Committee therefore recommend that the above provision may be amended suitably so as to provide for honoring the cheque to the extent the funds are available in the drawer's account. Such an action will however not impinge in any manner, upon the right of the payee to file criminal or civil proceedings against the drawer and at the same time will rather result in mitigating the hardship to which he is presently being subjected.

Section 141—Offences by Companies

11. Section 141 of the existing Act provides as under:—

“(i) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:—

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(ii) Notwithstanding anything contained in sub-section (i), where any offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

12. No amendment to the above section has been suggested by the Government in the proposed Amendment Bill, however, the Committee are of the considered view that provisions to sub-section (i) of section 141 of the Act is a little harsh and the same has at times caused harassment to those innocent persons who are not directly associated with the day to day affairs of the company. As per the provisions of this section, they are issued notices and dragged to the courts in order to prove their innocence. The Committee therefore feel that a distinction needs to be drawn between the executive and non-executive directors and only those persons who are in charge of and responsible to the company for its conduct of business should be made liable to be proceeded against and punished under this section.

Electronic Cheque

13. The Committee note that a Working Group headed by Shri N.V. Deshpandey, Principal Legal Advisor, Reserve Bank of India was constituted by the Government by an order No 1/4/2000-BO-I dated 9th January 2001 to suggest changes required in the provisions of Negotiable Instruments Act, 1881, with a view to bring about conformity between Negotiable Instruments Act and Information Technology Act. The Group submitted the report in June, 2001 recommending *interalia* the following:—

- (i) creation of an appropriate legal framework for developing and evolving negotiable instrument of e-cheque by suitably modifying the present provisions of Negotiable Instruments Act and the Information Technology Act;
- (ii) incorporating a new provision in the Negotiable Instruments Act defining the term “electronic cheque”;
- (iii) amending the provisions of the Negotiable Instruments Act to accord legal sanctity to the electronic cheque and
- (iv) appointing Reserve Bank of India as certifying authority for banks.

14. The Committee were informed during the course of evidence by the Ministry of Finance that the recommendations of the Working Group could not be incorporated in the present Negotiable Instruments (Amendment) Bill, 2001, as the deliberations on the present Bill were completed before the Group could submit its report. The Committee were however assured that the necessary amendments based on the recommendations of the Group would be proposed within a period of one month as the same are being examined in consultation with the Ministry of Law and other concerned departments.

15. In the light of the new technological changes taking place which are increasingly replacing the traditional documentation systems, the Committee urge upon the Government to bring forward necessary amendments in the Act urgently.

Setting up Special Courts

16. The Committee note that sections 138-142 of the Negotiable Instruments Act, 1881 prescribing penalties and procedure to be adopted for trial of cases in respect of dishonour of cheques due to insufficiency of funds in the drawer's account were inserted mainly to prevent such unscrupulous persons from issuing cheques particularly with a malafide intention in order to defraud the innocent people. The Committee however note that the incidence of cheques bouncing goes on unabated and is damaging the credibility of the whole system of transactions through the means of cheques. The things have come to such a pass that people have become wary of accepting cheques. A large number of reportedly pending cases in various courts bear ample testimony to the chaotic situation prevailing in this sector. Centre-wise information received from RBI pertaining to the cases of bounced cheques in Mumbai under the Negotiable Instruments Act during the period 1st January, 2001 to 31st August, 2001 is given in Appendix.

17. The Committee apprehend that enactment of the present Bill is not going to produce the desired results unless and until there is an effective mechanism to try such cases expeditiously. The Committee note that the courts as of now, are flooded with these and are of the view that unless more courts are set up, the proposed amendments can hardly improve the situation. The Committee, therefore, strongly recommend that more courts be set up so that the cases can be disposed of speedily.

NEW DELHI;
13 November, 2001
22 Kartika, 1923 (Saka)

SHIVRAJ V. PATIL,
Chairman,
Standing Committee on Finance.

NOTE OF DISSENT

RECEIVED FROM SHRI NARENDER MOHAN, M.P. (RS)

I am conveying my views relating to the discussions the Standing Committee on Finance have had today while deliberating on draft report on the Negotiable Instruments (Amendment) Bill, 2001. It is submitted that I do not agree with the views taken by the Committee that Section 141 of the existing Act is harsh and needs amendments. If any offence has been committed by the Director of a Company or by the partner of a partnership firm, he will be fully responsible under the Negotiable Instruments Act. And further, if the offence is of a commendable nature, then all the members of the Board should be responsible for this neglect or compounded offence. It is for the Court to see whether any Board Director was genuinely guilty of the offence or was not guilty. Certainly the Court will not punish any innocent person and those who are not innocent and are directly or indirectly responsible for the offence, they need to be punished. That is why I want that there should not be any change in Section 141 of the Negotiable Instrument Act. My dissent may kindly be noted.

NARENDRA MOHAN,
Member of Parliament
(Rajya Sabha).

NOTE OF DISSENT RECEIVED FROM

SHRI N.K.P. SALVE MEMBER OF PARLIAMENT (Rajya Sabha)

I regret I am unable to agree with the recommendations of the Committee that no amendment to Section 141 is called for. While the Committee, in terms states that proviso to Clause 1 is a little harsh and therefore, distinction needs to be drawn between the executive and non-executive directors, the same cannot be achieved unless an express provision to that effect is made.

In fact the existing proviso deals with the case of a Director who may have been incharge of and was responsible to the company for the conduct of the business of the company but proves that either the offence was committed without his knowledge or that it was committed despite his due diligence. The category of a Director who never was incharge of and responsible to the company for the conduct of its business must be separated. Such a Director must be saved from harassment of court proceedings. I, therefore, submit that a separate Sub-Section, as Sub-Section 1 (a) may be added in Section 141 after the proviso, reading as follows:—

- "1 (a) An affidavit filed by a Director before the court stating that he was never incharge of, and responsible for conduct of the business of the company shall be *prima facie* proof of his innocence."

N.K.P. SALVE,
Member of Parliament
(Rajya Sabha).

MINUTES OF THE TWENTY SECOND SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, 24 September, 2001 from 1200 hrs
to 13.15 hrs.

PRESENT

Shri Shivraj V. Patil — *Chairman*

MEMBERS

Lok Sabha

2. Smt. Renuka Chowdhury
3. Shri Rattan Lal Kataria
4. Shri Brahmanand Mandal
5. Shri Prakash Paranjpe
6. Shri Prabodh Panda
7. Shri Raj Narain Passi
8. Shri Rupchand Pal
9. Dr. Sanjay Paswan
10. Shri Ram Singh Rathwa
11. Shri T.M. Selvaganpathi
12. Shri C.N. Singh
13. Shri Kharbela Swain
14. Shri Narayan Dutt Tiwari

Rajya Sabha

15. Shri S.S. Ahluwalia
16. Dr. Biplab Dasgupta
17. Shri Amar Singh
18. Shri Solipeta Ramachandra Reddy

SECRETARIAT

1. Smt. (Dr.) P.K. Sandhu — *Joint Secretary*
2. Shri P.K. Grover — *Deputy Secretary*
3. Shri S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the Members of the Committee. The Committee then held preliminary discussion on the Negotiable Instruments (Amendment) Bill 2001. The Committee decided to take oral evidence of the representatives of the Ministry of Finance (Department of Economic Affairs—Banking Division), Reserve Bank of India and the Ministry of Law (Department of Legal Affairs and Legislative Department) on 9th October, 2001 to seek clarification on the provisions of the Bill. They also decided to hear the views of the representatives of 'Investors Grievances Forum' and the Bounced Cheque victims Grievances Forum, Mumbai on the proposed Bill.

The Committee then adjourned.

MINUTES OF THE TWENTY FIFTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, 9 October 2001 from 1100 hrs. to
1400 hrs.

PRESENT

Shri Shivraj V. Patil — *Chairman*

MEMBERS

Lok Sabha

2. Shri Prabodh Panda
3. Smt. Renuka Chowdhury
4. Shri G. Putta Swamy Gowda
5. Shri Rattan Lal Kataria
6. Shri Brahmanand Mandal
7. Shri M.V. Chandrashekhara Murthy
8. Shri M.V.V.S. Murthy
9. Shri Rupchand Pal
10. Shri Prakash Paranjpe
11. Shri Raj Narain Passi
12. Dr. Sanjay Paswan
13. Shri Varkala Radhakrishnan
14. Shri Pravin Rashtrapal
15. Shri Ram Singh Rathwa
16. Shri C.N. Singh
17. Shri Kirit Somaiya
18. Shri Kharabela Swain
19. Shri Narayan Dutt Tiwari

Rajya Sabha

20. Shri S.S. Ahluwalia
21. Shri Suresh A. Keshwari
22. Shri N.K.P. Salve

SECRETARIAT

1. Shri P.D.T. Achary — *Additional Secretary*
2. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
3. Shri R.K. Jain — *Deputy Secretary*
4. Shri S.B. Azora — *Under Secretary*

WITNESSES

I. Bounced Cheque Victims Grievances Forum, Mumbai

1. Shri Vijay Agarwal, President
2. Shri Kishan Chhabaria, Secretary
3. Shri Mahesh Thakkar, Executive Director, Association of Leasing & Financial Services Cos.
4. Shri Raman Agarwal, Secretary, Delhi Hire Purchase & Leasing Association

II. Investor's Grievance Forum, Mumbai

1. Shri Vipul Modi, Secretary
2. Shri Nitin Singhala
3. Shri Sunil Dravid, Treasurer

III. Representatives of Ministry of Finance

1. Shri Ajit Kumar, Finance Secretary—Department of Economic Affairs
2. Shri S.K. Purkayastha, Additional Secretary—Banking Division
3. Shri Shekhar Agarwal, Joint Secretary—Banking Division

IV. Representatives of Reserve Bank of India

1. Shri N.V. Deshpande, Principal Legal Adviser
2. Shri S.C. Gupta, Legal Adviser, Legal Department
3. Shri C.R. Murlidharan, Chief General Manager, Deptt. of Banking Operations and Development
4. Shri K.N. Rupani, Dy. General Manager

**V. Representatives of Ministry of Law, Justice & Company Affairs
(Department of Legal Affairs)**

1. Shri R.L. Meena, Law Secretary
2. Shri A. Sinha, Joint Secretary & Legal Adviser

(Legislative Department)

1. Dr. K.N. Chaturvedi, Addl. Secretary
2. Smt. Sharda Jain, Asstt. Legislative Counsel

PART I

2. At the outset, the Chairman welcomed the representatives of the Bounced Cheque Victims Grievances Forum and Investor's Grievance Forum, Mumbai to the sitting of the Committee and invited their attention to the Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives of the Bounced Cheque Victims Grievances Forum and Investor's Grievance Forum, Mumbai on 'the Negotiable Instruments (Amendment) Bill, 2001'. The Chairman asked them to furnish information on certain issues on which clarifications were sought by the Members during the sitting of the Committee.

The evidence was concluded.

A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

PART II

2. At the outset the Chairman welcomed the representatives of the Ministry of Finance, Reserve Bank of India (RBI) and Ministry of Law, Justice and Company Affairs to the sitting of the Committee.

3. The Committee then took oral evidence of the representatives of the Ministry of Finance, Reserve Bank of India (RBI) and Ministry of Law, Justice and Company Affairs on 'the Negotiable Instruments (Amendment) Bill, 2001'. The Chairman then asked the Ministry of Finance and RBI to furnish the information on certain issues on which clarifications were sought by the Members.

The evidence was concluded.

A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

MINUTES OF THE TWENTY SIXTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 18th October, 2001 from 12.00 hrs.
to 13.15 hrs.

PRESENT

Shri Shivraj V. Patil — *Chairman*

MEMBERS

Lok Sabha

2. Shri Raashid Alvi
3. Shri Prabodh Panda
4. Shri Rattan Lal Kataria
5. Shri Brahmanand Mandal
6. Shri Varkala Radhakrishnan
7. Shri Pravin Rashtrapal
8. Shri S. Jaipal Reddy
9. Shri C.N. Singh
10. Shri Kirit Somaiya
11. Shri Kodikunnil Suresh
12. Shri Kharabela Swain
13. Shri Narayan Dutt Tiwari

Rajya Sabha

14. Shri S.S. Ahluwalia
15. Shri Ranjan Prasad Yadav
16. Shri Suresh A. Keshwari
17. Prof. M. Sankaralingam
18. Shri Vijay Darda

SECRETARIAT

1. Shri P.D.T. Achary — *Addl. Secretary*
2. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
3. Shri R.K. Jain — *Deputy Secretary*
4. Shri S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. The Committee then took up for consideration the draft report on the Negotiable Instruments (Amendment) Bill, 2001. After deliberations the Committee decided to seek legal opinion from the Ministry of Law, Justice and Company Affairs on the feasibility of fixing time limit for the Courts to dispose of cases in the stipulated period as also the data from the Ministry of Finance on the cases pending in various courts under the Negotiable Instruments Act, 1881 in two metropolitan cities—Delhi and Mumbai.

Accordingly, the Committee decided to defer the finalisation and adoption of the draft report till 2nd November, 2001.

The Committee then adjourned.

MINUTES OF THE TWENTY EIGHTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 2nd November, 2001 from
1100 hrs. to 1245 hrs.

PRESENT

Shri Shivraj V. Patil — *Chairman*

MEMBERS

Lok Sabha

2. Shri Prabodh Panda
3. Smt. Renuka Chowdhury
4. Shri G. Putta Swamy Gowda
5. Shri Brahmanand Mandal
6. Shri M. Padmanabham
7. Shri Varkala Radhakrishnan
8. Shri T.M. Selvaganpathi
9. Shri Kirit Somaiya
10. Shri Kharabela Swain
11. Shri Narayan Dutt Tiwari

Rajya Sabha

12. Shri S.S. Ahluwalia
13. Shri Ranjan Prasad Yadav
14. Shri K. Rahman Khan
15. Shri Suresh A. Keshwani
16. Shri Narendra Mohan
17. Shri P. Prabhakar Reddy
18. Shri Amar Singh
19. Shri Solipeta Ramachandra Reddy

SECRETARIAT

1. Shri P.D.T. Achary — *Addl. Secretary*
2. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
3. Shri R.K. Jain — *Deputy Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. The Committee then took up for consideration the draft Report on Negotiable Instruments (Amendment) Bill 2001. The Committee after deliberations adopted the draft report without any modification/amendments. However, the Committee desired that centre-wise information received from the RBI pertaining to the number of cases of bounced cheques pending in Mumbai Court under the Negotiable Instrument Act during the period 1st January, 2001 to 31 August, 2001, may suitably be incorporated in the draft Report. The Committee thereafter authorised the Chairman to present the Report to both the Houses of Parliament.

3. ***

The Committee then adjourned.

APPENDIX I
(*Vide* paragraph 17 of Report)

**Centre-wise Information pertaining to the Negotiable
Instruments Act during the period 01.01.2001 to 31.08.2001**

Sl. No.	Name of the Centre	Opening balance as on 1/1/2001	Institution	Disposal	Closing balance at the end Aug., 2001
1.	Explanade	12049	1501	1197	12353
2.	Mazgaon	6551	1499	475	7575
3.	Girgaon	6427	1214	759	6882
4.	Dadar	5924	2024	339	7609
5.	Bandra	2881	532	242	3171
6.	Andheri	11201	2583	1085	12699
7.	Kurla	1366	0299	78	1587
8.	Ballard Pier	6273	810	859	6224
9.	Borivli	3161	434	568	3027
10.	Mulund	927	174	64	1037
11.	Vikhroli	1848	258	187	1919
12.	C.S.T. Rly.	—	—	—	—
13.	Mumbai Central	—	—	—	—
14.	Vile-Parle	—	—	—	—
15.	Shindewadi Dadar	—	—	—	—
Total		58608	11328	5853	64083

APPENDIX II

AS INTRODUCED IN LOK SABHA ON 24 JULY, 2001

Bill No. 37 of 2001

THE NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2001

A

BILL

further to amend the Negotiable Instruments Act, 1881.

Be it enacted by Parliament in the Fifty-second Year of the Republic of India as follows :—

1. This Act may be called the *Short title.*
Negotiable Instruments (Amendment) Act,
2001.

2. In section 138 of the Negotiable *Amendment*
Instruments Act, 1881 (hereinafter referred *of section*
to as the principal Act),— *138.*

(i) for the words "a term which may
be extended to one year", the words "a
term which may be extended to two years"
shall be substituted;

(ii) in the proviso, in clause (b), for the
words "within fifteen days", the words
"within thirty days" shall be substituted.

3. In section 142 of the principal Act, *Amendment*
after clause (b), the following proviso shall *of section*
be inserted, namely:— *142.*

"Provided that the cognizance of a
complaint may be taken by the Court after
the prescribed period, if the complainant
satisfies the Court that he had sufficient
cause for not making a complaint within
such period."

Insertion of
new
sections 143
to 147.

Power of
Court to
try cases
summarily.

4. After section 142 of the principal Act, the following sections shall be inserted, namely:—

“143. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials: 2 of 1974

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Court.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

2 of 1974

144. (1) Notwithstanding anything contained in sections 62 to 69 of the Code of Criminal Procedure, 1973, a Magistrate issuing a summon to a witness may direct a copy of summons to be served at the place where such witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

Mode of
service of
summons.

(2) Where an acknowledgement purporting to be signed by the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

2 of 1974

145. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

Evidence
on
affidavit.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

Bank's slip
prima facie
evidence of
certain
facts.

146. The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

Offences to
be
compound-
able.

147. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be compoundable". 2 of 1974

STATEMENT OF OBJECTS AND REASONS

The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encouraging the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, namely sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

2. A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act, 1881 in various courts in the country. Keeping in view the large number of complaints under the said Act pending in various courts, a Working Group was constituted to review section 138 of the Negotiable Instruments Act, 1881 and make recommendations as to what changes were needed to effectively achieve the purpose of that section.

3. The recommendations of the Working Group along with other representations from various institutions and organisations were examined by the Government in consultation with the Reserve Bank of India and other legal experts, it has been decided to bring out, *inter alia*, the following amendments in the Negotiable Instruments Act, 1881, namely:—

- (i) Increasing the punishment as prescribed under the Act from one year to two years;
- (ii) increasing the period for issue of notice by the payee to the drawer from 15 days to 30 days;
- (iii) to provide discretion to the court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;

- (iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;
- (v) to prescribe procedure for servicing of summons by the Court through speed post or empanelled private couriers;
- (vi) to provide for summary trial of the cases under the Act with a view to speeding up disposal of cases; and
- (vii) make the offences under the Act compoundable.

4. The amendments in the Act are expected to result in early disposal of cases relating to dishonour of cheques by the Courts and are also aimed at enhancing punishment for offenders.

4. The Bill seeks to achieve the above objects.

NEW DELHI:
The 25th April, 2001.

BALASAHEB VIKHE PATIL

ANNEXURE

EXTRACTS FROM THE NEGOTIABLE INSTRUMENTS ACT, 1881
(26 OF 1881)

* * * *

CHAPTER XVII

OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR
INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

138. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both :

Dishonour
of cheque
for
insufficiency,
etc., of
funds in
the
account.

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

* * * * *

Cognizance
of offences.

142. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— 2 of 1974.

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

LOK SABHA

A

BILL

further to amend the Negotiable Instruments Act, 1881.

*(Shri Balasaheb Vikhe Patil, Minister of State
in the Ministry of Finance)*